174

(2)

Supreme Court, U.S.
FILED
NOV - 3 2010
OFFICE OF THE CLERK

No. 10-183

In The Supreme Court Of The United States

FRED SAMSON
Petitioner

v.

JAMES MANLEY et, al
Respondent (s)

On a Write of Certiorari to the Supreme Court of Texas

PETITION FOR REHEARING

James Manley P.C
200 William Barnett
Cleveland , Texas 77327
(281) -593-1100

Melissa Davis
Ware Jackson , Lee & Chamber
2929 Allen Parkway
American Tower Floor 42
Houston, Texas 77019
Attorney for Respondent
Don Jackson
(713)-659-6400

Fred Samson Prose
Petitioner
1143 Yale
Houston , Texas 77008
(713)- 869-2031

TABLE OF CONTENTS

Page

STATEMENT PURSUANT TO RULE 44.2 ...1
TABLE OF AUTHORITIES ....ii, iii
PETITION FOR REHEARING 1
ARGUMENT 1
RESONS TO GRANT REHEARING 7
CONCLUSION 10
CERTIFCATE OF GOOD FAITH 11
CERTIFICATE OF SERVICES 12
REHEARING APPENDIX
[RA].....13
Constitution of the Unites States
Article VI, §2 and §3.....RA- 1

28 U.S.C. § 455 .....RA- 1
28 U.S.C. § 2106 .....RA- 1

October, 12, 2010 letter to Petitioner
from William K. Suter , Clerk U.S.
Supreme Court..... .....RA 2

TABLE OF AUTHRORITIES

Pages

Bowden v. Fort Smith 316 U.S. 582, 589 (1942)... 5
Flora v. United States , 362 U.S. 145, 167 (1960)..3
Florida v. Rodriguez , 461 U.S. 490 (1983).....4
Cohen v. Virginia 19. U.S. 164 10
Hammersmidt v. United States , 265 U.S. 182 (1924)..... 7
Lawrence v. Charter 516 U. S. 163 , 166 (1996).....1,2
Skilling v. United States 08-1394 (June 24,2010 .....1, 7
Maryland for the Use of Levin v. United States 382 U.S. 159 (1965).....3
Morissey v. Brewer 408. U.S 471 6
Mc Nally v. United States , 438 U.S. 350 (1987) 1, 7
Pallas Shipping Agency LTD v. Duris 461 U.S. 530.....8
Solem v. Helm , 463 U.S. 277, 284 -290 (1983 530 6
US v. Lee 106 U.S 106 5
White v. Texas 309 U.S. 631 , 310 U.S.(1940).....4

United States Constitution
Article III §.....3
Article IV §.....10
Fourteen
Armament Constitute.....6

Statues

28 U.S.C §2106.....2

Court Rules

U.S. Supreme Court
Rules 44.2 1

MISCELLANEOUS

Act of March 4(1927).....9

6 Wheta 264(1821) 10

PETITION FOR REHEARING

Petitioner [referred to herein as "Samson"] Submit this petition for rehearing pursuant to this Court's Rule 44.2 because of " intervening circumstances of a substantial or controlling effect or to other substantial grounds not previously present ." Samson filed petition for write of certiorari (Docket Case No. 10-183) on August 6, 2010 . Certiorari was denied by this Court on October 12, 2010

ARGUMENT

It is unusual for this Court to grant rehearing and grant plenary review , but it is far more common for this Court to grant rehearing and then grant certiorari, vacate the judgment below , and remand ("GVR order") for consideration of intervening decision of this Court . *E.g ., Skilling v United States* 08-1394 (June 24,2010) *McNally v. United States* , 483 U.S. 350 (1987).

This Court 's ' broad power to GVR" *Lawrence* v. *Charter* , 516 U.S. 163 , 166 (1996) (peer curiam)

Is derived from 28 U.S.C.§ 2106 , which authorizes this Court to " vacate *** any judgment, "remand the cause." any " required such further proceeding *** as may be just under circumstances." A GVR order ,is appropriate that issues exist that lower court may reject given the opportunity for future consideration and [ii] *** it appears redetermination may determine the possible outcome of the litigation . *Charter* , 516 U.S at 167(emphasis added)[1]

It is Supreme Court standard practice of entering a GVR order where as here an intervening decision of this Court has cast serious doubt on a court of appeals' decision :

This case involves a fundamental Right involving Balance of power between the People and the Government as crafted by Farmers centuries early To deny certiorari

would be deny of Due Process arbitrary apricious and an abuse of judicial direction . The Constitution on is all that stands between the People and total tyranny and despotism ,it is unable to defend itself .If a free people cant's defend in an Article II court , who can?

The Court most certainly has the obligation tohear and determined first impression cases such as this dealing as it does with the construction ofthe Constitution , that is its essential role .To fail to do so would be an abdication of its primary duty.

In *Flora v. United States* , 362 U.S. 145, 167 (1960), rehearing was granted on petition " focused almost exclusively upon a single clause in the prior opinion " dealing with the uniformmity of certain past litigation practices . In *Maryland for the Use of Levin* v. *United States* , 382 U.S. 159(1965) , where rehearing was granted solely to modify the Court's judgment so as to permit further proceedings below on unresolved issues in the original complainants .

This Court 's decision illustrated in *Florida v. United States* , 461 U.S. 940(1983) willingness to grant rehearing when its grant review in related issues in another case [1]

Question not presented in the original petition do not foreclosure upon rehearing even though the statutory period for filing petition for certiorari may have expired in the meantime in *White v. Texas* 309 U.S 631 (1939) 310 U.S 539 (1940). The Court's jurisdiction over the case is establish by a timely petition for certiorari . The issues that may then or thereafter be considered depend solely upon the Court decision .

1 More recently however the Court denied a petition for rehearing that had been kept on the cot docket during the pendency of a case raising a related issues .In a Day v McDonough 126 S Ct 1675 , 1680 n 2 (2006)

The Supreme Court may on its own motion , vacate an order denying certiorari even thought no petition for rehearing had been filed, if facts that would induce it to grant a rehearing come to its attention . Only Supreme Court revising itself sua sponte in the facts that, subsequent to the denial of certiorari , review has been granted in some other case raising identical or very similar issues. E.g. *Bowden v. Fort Smith* 316, U.S. 584, 589 (1942).

How many the citizen view this " monarchial " power in view of Justice *Samuel Miller's* opine in the *U.S. v. Lee* 106 U.S. 196, 220 1882 , that No man is so high that he is above the law . All...officers are creatures of law and are bounded to it ?

It is clear that Constitution both defines the parameters of legitimacy while yet conferring on the Judges , lawyers officer of the court with authorities to protect civic rights but not placing them thereby "outside" those parameters .

Most likely "due process is flexible and call Such procedure protection as the particular Situation demands *Morrisey v. Brewer* 408 U.S. 471, 481 (1972) Due process required at same level , that punishment be commensurate with the same the wrong conduct see Solem v. *Helm,,* 463 U.S> 277 , 284 – 290 .

United States Constitution Amendment IX Section 1 specifically pointed that :

" No states shall make or enforce any Law which shall abridge the privileges and immunity of citizens of the United States :; nor shall any States deprive any person of life , liberty , or property , without due process of law ; nor deny to any person within its jurisdiction the equal protection of the laws.

BEST AVAILABLE COPY

Reasons to Grant Rehearing

This Court grant certiorari also in few cause such as ; *Hamilerschmidt v. United States* , 265 U.S (1924) on related charged like in petitioner claim such fraud, conspiracy and other issue related to fraud as to " defraud" United States . In case *MCNally v. United Sates* 483 U.S. 35 (1987) certiorari was also grant in cause *Skilling v. United States* 08-1394 (August 2010) Skilling case has familiar issues that closely reflected in Samson petition for a write of certiorari .

Petitioner issues present in his Petition for a Write of Certiorari and also present in this request for Petition for Rehearing are not foreign to this Court. This Court deal and review many similar cases and grant certiorari or Petition for rehearing many time in the past and present longer

Petitioner cause is complex that involves many different not resolved issues that not all had been presented in his Petition for write certiorari . In case *Skilling v. United States* Court charged Skilling with deceive investor, making false statement conspiracy "honest services " deprive shareholders of the intangible property .

Each case may be similar but will be also different, some issues may be exactly the same but approached can be differrent with different result we see In case *Pallas Shipping Agency ,LT v. Duris* 461 U.S. 530 certiorari was granted the issue involved of compensation reward . When Duris accepted the compensation under Act , with fully knowledge that he was not entitled to sue third parties, because all such fact had been explained to him . However when person do not accepted benefits , instead request trial and was defraud in the process, such issues need to be review

"The Act [as originally enacted in 1927] required a longshoreman to chose between the receipt i of compensation award from his employer and a damages suit against the third party Act of March 4, 1927, § 33, 44 Stat.1440 ."

As the House Committed explained :

" acceptance of compensation without knowledge of the effect upon such right may work grave injustice . The assignment of this right of action against the third part might properly be contingent upon the acceptance of compensation under an award in a compensation order issued by deputy commissioner , thus giving opportunity to the injury person ....to consider the acceptance of compensation from the employer with the result loss of right to bring suit in damages against the third part .

H.R .Rep. No. 1945, 75 t Cong Sess., 9,

It would be unfair for the Samson if the Court to fail to hear this case involving a first impression question of public importance ,i.e. the constitutional meaning of *Fourteenth Amendment* of Section 1 while agreed to hear many cases of far laser important , including the bankruptcy defamation/probate .

> " In *Cohen v. Virginia* Chief Justice Marshall famously cautioned : "It is most true that this Courts will not take jurisdiction if it should not: but it is equally true, that it must take jurisdiction , if it should..... We have no more right to.. decline the exercise of jurisdiction which is given , than to usurp that which is not given ." 6 Wheat .264 , 404 (1821)

Conclusion

The Court should grant petition for rehearing , vacated the order denying certiorari and enter the order that grant petition for certiorari in all or some aspects, toget with such other future relief as may be just under this circumstances

Respectfully Submitted

By:_____

FRED SAMSON pro sc
1143 Yale
Houston, Texas 77008
(713) 869-2031

November 3, 2010.

CERTIFICATE OF GOOD FAITH

Fred Samson Petitioner pro se herein , do herby affirm and declare that this petition for rehearing is presented in good faith and not for purpose of delay

FRED SAMSON

November 3, 2010

CERTIFICATE OF SERVICES

I hereby certify that true and original of three copies of the forgoing instrument Petition for Rehearing was sent to opposite party counsel and pro se this day on November 3, 2010.

James Manley P.C
James Manley pro se
200 William Barnett
Cleveland, Texas 77327

Melissa Davis
Ware Jackson Lee & Chamber
2929 Allen Parkway
American Tower floor 42
Houston Texas 77019

FRED SAMSON

APPENDIX

RA-1

CONSTITUTIONAL AND STATUTORY PROVISIONS

US.CONSTITUTION

Article VI.§2:

This Constitution , and Law of the United States which shall be made in pursuance thereof , and all Treaties made or which shall be made, under the Authority of the United in every States shall be bounded thereby , and Thing in the Constitution or Laws of any States to the Contrary notwithstanding.

Article VI. § 3

The Senators and representative before mentioned and the Members of the several state Legislatures , and all executive and judicial officers , both of the United States and of the several states , shall be bounded by Oath Or Affirmation, to support this Constitution ; .....

FEDERAL STATUES

28 U.S. C. : 453

Each justice or judge of the United States shall take the Following oath or affirmation before performing the duties of his office :" I,__-do solemnly swear (or affirm) that I will administer justice without respect to person , and do equal right to the poor and to the rich, and that I will faithfully and impartially discharged and perform all the duties incumbent upon me as _____under the Constitution and laws of the United States . So help me God . "

28 U.S. C. § 2106

The Supreme Court or any other court of Appellate jurisdiction may affirm, modify vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the' bcause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be as may be just under the circumstances.

SUPREME COURT of the UNITED STATES
OFFICE OF THE CLERK
Washington , DC 200543 - 0001

William K. Suter
Clerk of the Court
(202) 479 -3011

October 12, 2010
Mr. Fred Samson
v. James Manley et, al

No. 10-183

Dear Mr. Samson

The Court today entered the following order in the above –entitled case .
The petition for a written of certiorari is denied

Sincerely
/s

William K. Suter , Clerk